

MEMO TO: Town Council

FROM: Kathleen Dooley, Town Attorney

DATE: May 7, 2004

RE: May 11, 2004 Consent Agenda
Items related to the Tom's Creek Sewer Project

Your May 11, 2004 Consent Agenda items H., I., and J. are all related to the termination of the Tom's Creek Sewer Project. They memorialize Town Council direction with respect to several outstanding project issues.

Item H. directs staff to reject all bids for the construction of the project. These bids are referred to by the bid numbers assigned by the Purchasing Director. They cover all aspects of construction of Phase I of the project, including the construction of the pump station and the sewer lines. Bids are essentially offers to perform a job at a stated price. By rejecting all bids, Council declines to accept these offers. The Purchasing Director has contacted the bidders as a courtesy, to inform them of Council's anticipated action. Virginia Code section 2.2-4319 and Town Code section 16-210 grant the Town authority to cancel or reject all bids without penalty.

Item I. directs the Town Manager not to close on the bonds that were issued to finance the project. The last formal direction from Council, on March 9, 2004, was to close on the bonds. In light of the cancellation of the project, Council has determined not to incur the debt associated with the construction costs. This Consent Agenda item creates a record of this decision for the future.

Item J. terminates all outstanding offers to purchase utility easements for the project. Again, Council's last direction, memorialized in Resolution 3-F-04 on March 23, 2004, was for staff to acquire the easements, by condemnation if necessary. With the cancellation of the project, there is no need to continue to acquire easements, and this Consent Agenda item memorializes this decision for future reference.

Attorney Bill Broaddus has contacted plaintiff's attorney David Bailey to inform him of Council's anticipated action on these items. We expect that the lawsuit challenging the validity of the bonds will be withdrawn in response to Council's action. This will save the Town additional legal fees associated with the litigation.

The engineering contract with Anderson & Associates covered services through the bidding process for the construction of the project. Anderson has performed this work. A purchase order for construction management services had been prepared but not finalized. Thus, there is no need to amend or terminate Anderson's contract.

Roanoke attorney Ron Ayers had performed some preliminary legal services for the Town related to the land acquisition phase of the project. I have asked him to prepare a statement and submit it for payment. We will handle this administratively.

Finally, staff will meet next week to determine the additional impacts of the cancellation of the project. For example, we will review the sewer connection fees, sewer usage rates, and 2004-2005 budget and C.I.P. to determine whether amendments are in order. Meanwhile, please feel free to contact me if you have questions or concerns.